

1   **COOPERATIVE AGREEMENT NO. C-3-2654**  
2   **BETWEEN**  
3   **ORANGE COUNTY TRANSPORTATION AUTHORITY**  
4   **AND**  
5   **CITY OF HUNTINGTON BEACH**  
6   **FOR**  
7   **I-405 IMPROVEMENT PROJECT**

8                         **THIS COOPERATIVE AGREEMENT (Agreement)**, is effective this \_\_\_\_\_ day of  
9 \_\_\_\_\_, 2023 (Effective Date), by and between the Orange County Transportation  
10 Authority, 550 South Main Street, P.O. Box 14184, Orange California 92863-1584, a public corporation  
11 of the State of California (herein referred to as "AUTHORITY") and the City of Huntington Beach, 2000  
12 Main Street, Huntington Beach, California 92648, a municipal corporation duly organized and existing  
13 under the constitution and laws of the State of California (herein referred to as "CITY") each individually  
14 known as "Party" and collectively known as the "Parties".

15   **RECITALS:**

16                         **WHEREAS**, AUTHORITY, in cooperation and partnership with the California Department of  
17 Transportation, herein referred to as "CALTRANS", is proposing to reduce congestion and improve  
18 lane continuity through the Interstate 405 (I-405) corridor with improvements to mainline and  
19 interchanges on the I-405 between State Route 73 (SR-73) and Interstate 605 (I-605); and

20                         **WHEREAS**, the improvements are generally defined as adding one general-purpose lane from  
21 Euclid Street to I-605, plus adding an additional median lane which will be combined with the existing  
22 high-occupancy vehicle (HOV) lane and operated as dual express lanes in each direction of the I-405  
23 from SR-73 to I-605, replacing and/or widening structures, and other additional geometric and  
24 interchange improvements, including improvements to CITY-owned and operated streets, and traffic  
25 facilities hereinafter referred to as CITY FACILITIES potentially impacted by this project, all of which  
26 are hereinafter referred to as "PROJECT".

1           **WHEREAS**, AUTHORITY has hired a design-build team, OC405 Partners, JV, herein referred  
2 to as "CONTRACTOR", to design, and construct PROJECT via a design-build delivery method, and  
3 design-build contract was executed January 31, 2017. Contract documents (CONTRACT  
4 DOCUMENTS) refer to all documents as part of the contract with OC405 Partners, JV; and

5           **WHEREAS**, Cooperative Agreement C-5-3614 between AUTHORITY and CITY concerning  
6 this Project has expired on April 30, 2023,; and **WHEREAS**, this Cooperative Agreement defines the  
7 specific terms, conditions, and funding responsibilities between the AUTHORITY and CITY regarding  
8 the design and construction of PROJECT in regards to CITY FACILITIES through Project closeout  
9 anticipated June 30, 2024; and

10           **WHEREAS**, AUTHORITY is the sponsor and the primary funding agency for PROJECT; and

11           **WHEREAS**, CITY-owned and operated utilities will be subject to an utility agreement(s) and  
12 separate from, and outside of this Agreement; and

13           **WHEREAS**, PROJECT is located within and adjacent to the CALTRANS right of way in the Cities  
14 of Costa Mesa, Fountain Valley, Huntington Beach, Westminster, Garden Grove, Seal Beach, Los  
15 Alamitos, and County of Orange; and

16           **WHEREAS**, AUTHORITY has contracted with Parsons Transportation Group, Inc., as the  
17 Program Management Consultant (PMC) for this PROJECT, to assist with the administration and  
18 oversight of the procurement, and design and construction phases of PROJECT; and

19           **WHEREAS**, AUTHORITY has contracted with Jacobs Project Management Co., as the  
20 Construction Management Consultant (CMC) for this PROJECT, to assist with the administration and  
21 oversight of the procurement, and construction phases of PROJECT; and

22           **WHEREAS**, AUTHORITY agrees to acquire right of way; and

23           **WHEREAS**, AUTHORITY shall ensure CONTRACTOR's compliance with all applicable  
24 requirements contained in this Agreement; and

25           **WHEREAS**, CITY FACILITIES will potentially be impacted by PROJECT, and AUTHORITY  
26 desires to collaborate with CITY during the design and construction of PROJECT; and

1           **WHEREAS**, AUTHORITY will provide contract administration for all phases of PROJECT work  
2 on CITY FACILITIES, and work within CITY right of way, while adhering to State, Federal, and CITY  
3 standards and requirements, as applicable; and

4           **WHEREAS**, AUTHORITY will reimburse CITY for actual costs for CITY SERVICES, as related to  
5 improvements to CITY FACILITIES, and defined as:

- 6           • Review and approval of plans, specifications, and other pertinent engineering plans,  
7           and reports, and for oversight construction inspection services
- 8           • Review and acceptance of Transportation Management Plan (TMP)
- 9           • Traffic engineering, and oversight detour inspections
- 10          • CITY police services; and

11           **WHEREAS**, AUTHORITY has paid to CITY, in the amount of Six Hundred Eighty Two Thousand  
12 Seven Hundred Thirty Seven Dollars (\$682,737), for pavement mitigation costs, as quantified and priced  
13 by the AUTHORITY, and identified in the Structural Pavement Investigation and Report, I-405 Final  
14 Concept Detour Routes Impact Study, I-405 Improvement Project, dated October 11, 2018; and

15           **WHEREAS**, in addition to the pavement mitigation reimbursement by AUTHORITY as set forth  
16 above, Parties agree to assess and evaluate actual post-construction impacts to CITY streets, on a case-  
17 by case basis, as a result of PROJECT's signed, long-term detours within CITY's jurisdiction, as well as  
18 the costs of mitigating such impacts, if any; and

19           **WHEREAS**, CITY agrees to manage its staff and consultants to provide CITY SERVICES within  
20 the Maximum Obligation amount as amended herein; and

21           **WHEREAS**, AUTHORITY's Board of Directors authorized this Agreement on the \_\_\_\_\_ day of  
22 \_\_\_\_\_, 2023; and

23           **WHEREAS**, CITY's City Council approved this Agreement on the \_\_\_\_\_ day of  
24 \_\_\_\_\_, 2023.

25           **NOW, THEREFORE**, it is mutually understood and agreed by AUTHORITY and CITY as follows:

26 /

1           **ARTICLE 1. COMPLETE AGREEMENT**

2           A.       This Agreement, including any attachments incorporated herein and made applicable by  
3 reference, constitutes the complete and exclusive statement of the term(s) and conditions(s) of this  
4 Agreement between AUTHORITY and CITY and it supersedes all prior representations, understandings,  
5 and communications. The invalidity in whole or in part of any term or condition of this Agreement shall  
6 not affect the validity of other term(s) or conditions(s) of this Agreement. The above referenced Recitals  
7 are true and correct and incorporated by reference herein.

8           B.       AUTHORITYS' failure to insist on any instance(s) of CITY's performance of any term(s)  
9 or condition(s) of this Agreement shall not be construed as a waiver or relinquishment of AUTHORITY's  
10 right to such performance or to future performance of such term(s) or condition(s), and CITY's obligation  
11 in respect thereto shall continue in full force and effect. Changes to any portion of this Agreement shall  
12 not be binding upon AUTHORITY except when specifically confirmed in writing by an authorized  
13 representative of AUTHORITY by way of a written amendment to this Agreement and issued in  
14 accordance with the provisions of this Agreement.

15           C.       CITY's failure to insist on any instance(s) of AUTHORITY's performance of any term(s) or  
16 condition(s) of this Agreement shall not be construed as a waiver or relinquishment of CITY's right to such  
17 performance or to future performance of such term(s) or condition(s), and AUTHORITY's obligation in  
18 respect thereto shall continue in full force and effect. Changes to any portion of this Agreement shall not  
19 be binding upon CITY except when specifically confirmed in writing by an authorized representative of  
20 CITY by way of a written amendment to this Agreement and issued in accordance with the provisions of  
21 this Agreement.

22           **ARTICLE 2. SCOPE OF AGREEMENT**

23           This Agreement specifies the roles and responsibilities of the Parties as they pertain to the  
24 subjects and projects addressed herein. Both AUTHORITY and CITY agree that each will cooperate and  
25 coordinate with the other in all activities covered by this Agreement and any amendments to this  
26 Agreement.

1           **ARTICLE 3. RESPONSIBILITIES OF AUTHORITY**

2           AUTHORITY agrees to the following responsibilities for PROJECT:

3           A.     To be the sponsor and funding agency to manage and administer the design-build  
4 contract for PROJECT, which includes preliminary engineering, right of way acquisition, , and other  
5 related services, including improvements to CITY FACILITIES which are necessary as part of PROJECT.

6           B.     To perform right of way acquisition and right of way certification for PROJECT, and  
7 specifically, for CITY FACILITIES, if necessary.

8           C.     To include within the CONTRACT DOCUMENTS, in regard to CITY FACILITIES, design  
9 criteria which meets acceptable CITY standards, and are applicable at the time of Contract execution.  
10 This responsibility was achieved through, and referenced in, Cooperative Agreement C-5-3614.

11          D.     To coordinate with CITY during the development of the CONTRACT DOCUMENTS, and  
12 afford the CITY the opportunity to review, and comment on the CONTRACT DOCUMENTS, in regard to  
13 CITY FACILITIES, and in accordance with the terms of this Agreement. This responsibility was achieved  
14 through, and referenced in, Cooperative Agreement C-5-3614.

15          E.     The CITY review times will be applicable to the design and construction of PROJECT in  
16 regard to CITY FACILITIES. AUTHORITY will hold Joint Resolution Meetings (JRT) with CITY to resolve  
17 CITY comments and obtain approvals, if applicable.

18          F.     To coordinate the design and construction of PROJECT with the CITY and hold regular  
19 technical and partnering meetings to brief the CITY on the status of PROJECT, solicit input, and provide  
20 a forum to discuss and resolve PROJECT issues which impact the CITY.

21          G.     To comply with all requirements of the Final Environmental Impact Report/Environmental  
22 Impact Statement (FEIR/FEIS) for the PROJECT, including but not limited to the preparation and  
23 processing of any, and all supplemental environmental documents, including those required for CITY  
24 FACILITY improvements as part of PROJECT.

25 /

26 /

1 H. If AUTHORITY encounters hazardous, archeological, paleontological, cultural, or other  
2 protected materials and/or species within any existing or future CITY-owned right of way for the CITY  
3 FACILITIES, AUTHORITY shall notify the CITY and responsible control agencies of such discovery.

4 I. The costs for any remediation or protection for Article 3, Paragraph H, shall be covered  
5 as a PROJECT cost, provided that AUTHORITY may seek reimbursement from other third parties which  
6 may be jointly or severally liable for such removal or protection.

7 J. To protect in place, rearrange or relocate after CITY consultation and concurrence, CITY  
8 owned public utility facilities found to be in conflict with PROJECT. All conditions of this clause shall be  
9 subject to utility agreements which are separate from, and outside of this Agreement.

10 K. To secure and comply with any, and all other governmental and/or regulatory approvals,  
11 permits and/or clearances required for the design and construction of CITY FACILITIES included in  
12 PROJECT.

13 L. In the event CITY requests additional improvements, they shall be evaluated and  
14 processed in accordance with Article 4, Paragraph L, of this Agreement.

15 M. To implement a Quality Management Plan during all phases of PROJECT.

16 N. To monitor all PROJECT activities to ensure compliance with the approved PROJECT  
17 schedule, quality and budget goals of PROJECT.

18 O. To obtain concurrence for permanent easements, if required, for CITY FACILITIES.

19 P. To facilitate discussion between CITY, local agencies, and others regarding resolution of  
20 ownership, operation, and maintenance of CITY FACILITIES.

21 Q. To coordinate with CALTRANS and CITY for preparation and execution of Maintenance  
22 Agreements.

23 R. To convey ownership of any property acquired by AUTHORITY for PROJECT, and which  
24 is necessary for CITY FACILITIES upon completion of the CITY FACILITIES, and title to such right of  
25 way having been acquired by AUTHORITY. Conveyance of such property to the CITY shall be completed

26 /

1 through an executed Property Transfer Agreement with AUTHORITY. AUTHORITY shall convey such  
2 property in a condition acceptable to the CITY and in accordance with CALTRANS' Right of Way Manual.

3 S. To require CONTRACTOR to submit to CITY for review and approval, including but not  
4 limited to, plans, specifications, and other pertinent engineering plans, and reports, for CITY FACILITIES  
5 prior to construction thereof. During construction, CITY may provide construction oversight inspection  
6 services. Such reviews and approvals, and construction oversight inspection services (CITY SERVICES)  
7 shall be in accordance with the CONTRACT DOCUMENTS, and reimbursable to CITY by this  
8 Agreement.

9 T. To require CONTRACTOR to implement all applicable elements of the approved  
10 Transportation Management Plan (TMP) and TMP amendments.. The TMP addresses construction-  
11 related impacts to existing CITY street traffic, and includes normal traffic handling requirements during  
12 PROJECT construction including staging, lane closures, re-striping, detours, and signalization, and  
13 specifies requirements for communicating with the public and local agencies during construction.  
14 Modifications to streets, intersections, signals, etc., required to address traffic impacts during construction  
15 will be borne as a PROJECT cost. Such review and acceptance of TMP (CITY SERVICES) shall be in  
16 accordance with the CONTRACT DOCUMENTS, and reimbursable to CITY by this Agreement.

17 U. To obtain a written acceptance of TMP amendments from CITY.

18 V. To reimburse the CITY for its actual costs for oversight detour inspections, traffic  
19 engineering services (including staff overhead and third-party traffic signal maintenance service costs  
20 contracted out by CITY), and police services (including overtime costs). Ongoing deployment of  
21 police services related to PROJECT traffic management will require prior approval by AUTHORITY.  
22 Such traffic engineering, oversight detour inspections, and police services (CITY SERVICES) shall be  
23 in accordance with the CONTRACT DOCUMENTS, and reimbursable to CITY by this Agreement.

24 W. To monitor and ensure CONTRACTOR compliance with the TMP.

25 X. To work collaboratively with CITY to prepare a methodology for approval by Parties, for  
26 post-detour analysis of pavement conditions of CITY streets that were used for signed, long-term and

1 alternate route detours. As part of the pre-detour analysis of pavement conditions of CITY streets,  
2 AUTHORITY has previously reimbursed CITY the amount of Six Hundred Eighty Two Thousand Seven  
3 Hundred Thirty Seven Dollars (\$682,737), for pavement mitigation costs, as quantified and priced by the  
4 AUTHORITY, and identified in the Structural Pavement Investigation and Report, I-405 Final Concept  
5 Detour Routes Impact Study, I-405 Improvement Project, dated October 11, 2018. The pre-detour  
6 pavement analysis identified CITY street segments that were determined to need pavement repair due  
7 to signed, long-term and alternate route detours, based on the existing pavement conditions and  
8 forecasted impacts resulting from the PROJECT. Analysis of post-detour pavement conditions for  
9 signed, long-term and alternate route detours, will be performed when the respective detour(s) is no  
10 longer needed. Parties will agree on the final AUTHORITY reimbursement cost for the individual detours  
11 upon review of the post-detour pavement analysis for each specific detour, at which time CITY can invoice  
12 for that agreed upon cost. Pavement mitigation amounts for street pavement repairs (CITY SERVICES)  
13 shall be in accordance with the CONTRACT DOCUMENTS, and reimbursable to CITY by this Agreement  
14 and applicable amendments.

15 Y. To require CONTRACTOR to repair street pavements that receive damage as a result of  
16 construction. CONTRACTOR will be required to adhere to CITY's requirements for removal and  
17 replacement of pavement in accordance with the CONTRACT DOCUMENTS and this Agreement.

18 Z. To require CONTRACTOR to obtain a no fee encroachment permit from CITY prior to  
19 commencing construction of PROJECT. Provided all conditions of such permit have been fulfilled, the  
20 permits shall authorize CONTRACTOR to commence work within CITY right of way, or areas which affect  
21 CITY FACILITIES.

22 AA. To monitor and ensure CONTRACTOR compliance with CITY's permit.

23 BB. To implement a Public Awareness Campaign during PROJECT that advises CITY, local  
24 businesses, residents, elected officials, motorists, and media, of construction status, street detours, and  
25 ramp and freeway closures, if and where applicable.

26 CC. To provide PROJECT closeout activities, including walk-through, punch list, final payment



1 accounting, and furnish approved "As-builts" to CITY for CITY FACILITIES.

2 DD. To develop, for CITY, a record of survey, final maps, and all necessary title transfers  
3 relative to PROJECT.

4 EE. To reimburse CITY for combined costs identified as "CITY SERVICES", and in  
5 accordance with the attached SCHEDULE A, "REIMBURSEMENT SCHEDULE FOR  
6 COMBINED CITY SERVICES."

7 EE. To reimburse CITY for actual costs, within 30 days from receipt of an acceptable invoice,  
8 which is complete, properly prepared and complies with the requirements of ARTICLE 5, REQUEST FOR  
9 REIMBURSEMENT, below.

10 FF. AUTHORITY's reimbursement for CITY SERVICES will not exceed the combined  
11 maximum amount shown on SCHEDULE A.

12 GG. To perform all work associated with the PROJECT at no cost to the CITY, unless  
13 specifically provided otherwise herein or in any amendment to this Agreement.

14 HH. To cause all contractors and vendors who perform work or provide supplies for CITY  
15 FACILITIES to name the CITY as an additional insured on policies of insurance wherein AUTHORITY  
16 requires CITY to be named as an additional insured and, prior to the commencement of work, provide  
17 certificates of insurance to CITY showing the CITY as an additional insured.

18 **ARTICLE 4. RESPONSIBILITIES OF CITY**

19 CITY agrees to the following responsibilities for PROJECT:

20 A. To collaborate and cooperate with AUTHORITY during the development of the  
21 CONTRACT DOCUMENTS and during the design and construction of PROJECT.

22 B. To provide CITY SERVICES for PROJECT as agreed by CITY and AUTHORITY.

23 C. To review, and provide comment on, in a timely manner, and in accordance with the  
24 CONTRACT DOCUMENTS and this Agreement, all plans and other submittals related to PROJECT, and  
25 approve and/or concur with AUTHORITY or CONTRACTOR's submittals when CITY determines such  
26 submittals comply with CITY's standards and criteria to facilitate AUTHORITY's delivery of PROJECT.

1           D.     To make available to AUTHORITY all necessary CITY regulations, policies, procedures,  
2 manuals, standard plans, and specifications required for the construction of PROJECT when requested  
3 by AUTHORITY.

4           E.     To attend and participate in the PROJECT's regular technical and partnering meetings for  
5 AUTHORITY to brief CITY on the status of PROJECT, and to provide a forum to discuss and to resolve  
6 CITY's concerns and issues.

7           F.     To make reasonable efforts and devote reasonable resources for the issuance of  
8 encroachment permits, and other necessary permits, if applicable, to CONTRACTOR at no fee, and upon  
9 CONTRACTOR's compliance with permit requirements, to not cause delay to PROJECTS' construction  
10 schedule. Such permits shall authorize CONTRACTOR to commence work within CITY right-of-way, or  
11 areas which affect CITY FACILITIES.

12          G.     To make necessary efforts to coordinate and cooperate with AUTHORITY, its agents, and  
13 contractors, to meet or exceed design-build schedule criteria as identified by AUTHORITY.

14          H.     To waive any moratorium on the excavation or trenching work on CITY streets that were  
15 recently resurfaced where such excavation or trenching are necessary for PROJECT. CONTRACTOR  
16 will be required to adhere to CITY's requirements for the removal and replacement of pavement in  
17 accordance with the CONTRACT DOCUMENTS and this Agreement.

18          I.     To cooperate with AUTHORITY and use its best efforts to cause the rearrangement or  
19 relocation of all municipal and public utility facilities, in accordance with applicable State or local franchises  
20 or laws, that may be determined by the AUTHORITY and the CITY to be within CITY's jurisdiction and  
21 pose a conflict with the PROJECT. The CITY hereby agrees to exercise and invoke its rights under  
22 any applicable State or local franchises or laws, or any prior rights or superior rights the CITY may  
23 have to effectuate such rearrangement or relocation at the expense of the affected public utility as  
24 necessary to conform to PROJECT. The CITY shall cooperate with the AUTHORITY and provide all  
25 appropriate and necessary support to achieve this result. In the event the public utility fails to make  
26 the rearrangement or relocation or fails to agree to make the rearrangement or relocation in a timely

1 manner, the CITY shall assign its rights as they apply to such rearrangement or relocation as  
2 necessary to permit the AUTHORITY to cause rearrangement or relocation in a timely manner. The  
3 CITY shall cooperate with the AUTHORITY, provide assistance to the AUTHORITY as needed, and  
4 join with the AUTHORITY as a party in the prosecution or defense of the CITY's and the AUTHORITY's  
5 rights under the laws of the State of California to cause such rearrangements or relocations. Wherever  
6 possible, any rearrangement or relocation of a public utility shall be made to an area covered by a  
7 State or local franchises or laws. All conditions of this clause shall be subject to utility agreements  
8 which are separate from and outside of this Agreement.

9 J. To agree to take ownership of property acquired by AUTHORITY for PROJECT, and  
10 which is necessary for CITY FACILITIES upon completion of the CITY FACILITIES, and title to such right  
11 of way having been acquired by AUTHORITY. Conveyance of such property to the CITY shall be  
12 completed through an executed Property Transfer Agreement with AUTHORITY. AUTHORITY shall  
13 convey such property in a condition acceptable to CITY and in accordance with CALTRANS Right of Way  
14 Manual.

15 K. To accept operation and maintenance of the CITY FACILITIES, or portion thereof, upon  
16 their acceptance by AUTHORITY, and based upon the AUTHORITY's written certification that the  
17 AUTHORITY has complied with all terms of the Agreement. The acceptance of the CITY FACILITIES  
18 and written certification shall not unreasonably be withheld. CITY acknowledges that CITY FACILITIES  
19 may be completed at different times and accepted in different stages of PROJECT.

20 L. In the event CITY requests additional CITY FACILITY improvements to be incorporated  
21 into PROJECT, CITY shall be solely responsible for all costs and expenses related thereto, including:  
22 1) the costs incurred to incorporate the improvements into the PROJECT's scope of work; 2) additional  
23 design, construction and oversight costs arising from or associated with the improvements, including  
24 change orders related thereto; 3) additional operations and maintenance costs arising from or  
25 associated with the improvements, including change orders related thereto; and 4) costs associated  
26 with any impact on the design and construction schedule associated with the improvements, including

1 any associated PROJECT delay costs and damages. This is not intended to eliminate mitigations  
2 for required PROJECT changes identified during construction. AUTHORITY, at its sole discretion,  
3 may agree to incorporate such CITY FACILITY improvements, via an amendment to this  
4 Agreement, identifying the CITY FACILITY improvements, estimated costs, and funding sources from  
5 CITY for these improvements.

6 M. To submit monthly invoices to AUTHORITY for work completed and actual costs incurred  
7 by CITY for CITY SERVICES, pursuant to ARTICLE 5. REQUEST FOR REIMBURSEMENT. CITY shall  
8 submit final invoice no later than ninety (90) days after final acceptance of PROJECT. Any costs in  
9 excess of the amounts specified herein shall not be incurred without a written amendment to this  
10 Agreement.

11 **ARTICLE 5. REQUEST FOR REIMBURSEMENT**

12 In order for CITY to be reimbursed for incurred costs relative to PROJECT, CITY agrees:

13 A. To prepare and submit to AUTHORITY a monthly invoice with supporting  
14 documentation. CITY's invoice shall include allowable PROJECT costs incurred and paid for by CITY.  
15 The invoice submitted by CITY shall be signed by an authorized agent who can duly certify the  
16 accuracy of the included information.

17 B. The invoice shall be submitted on CITY's letterhead.

18 C. The invoice shall be submitted by CITY, and in duplicate, to AUTHORITY's Accounts  
19 Payable Office. Each invoice shall include the following information:

- 20 1. Agreement Number C- X-XXXX
- 21 2. The total of PROJECT expenditures shall specify the percent and amount of funds  
22 to be reimbursed, and include support documentation for all expenses invoiced.
- 23 3. Adequate detail describing all work completed.
- 24 4. Such other information as requested by AUTHORITY.

25 D. To consult with AUTHORITY's Project Manager for questions regarding non-reimbursable  
26 expenses.

1           E.     That total payments shall not exceed the maximum obligation specified in ARTICLE 7.  
2     MAXIMUM OBLIGATION.

3           **ARTICLE 6. DELEGATED AUTHORITY**

4           The actions required to be taken by CITY in the implementation of this Agreement are delegated  
5     to its CITY's Public Works Director, or designee, and the actions required to be taken by AUTHORITY in  
6     the implementation of this Agreement are delegated to AUTHORITY's Chief Executive Officer or  
7     designee.

8           **ARTICLE 7. MAXIMUM OBLIGATION**

9           Notwithstanding any provisions of this Agreement to the contrary, AUTHORITY and CITY  
10    mutually agree that AUTHORITY's maximum cumulative payment obligation hereunder shall be Two  
11    Hundred Thousand dollars (\$200,000), unless agreed to and amended by both Parties.

12          **ARTICLE 8. AUDIT AND INSPECTION**

13          AUTHORITY and CITY shall maintain a complete set of records in accordance with generally  
14    accepted accounting principles. Upon reasonable notice, CITY shall permit the authorized  
15    representatives of the AUTHORITY to inspect and audit all work, materials, payroll, books, accounts, and  
16    other data and records of CITY for a period of four (4) years after final payment, or until any on-going  
17    audit is completed. For purposes of audit, the date of completion of this Agreement shall be the date of  
18    AUTHORITY's payment of CITY's final billing (so noted on the invoice) under this Agreement.  
19    AUTHORITY shall have the right to reproduce any such books, records, and accounts. The above  
20    provision with respect to audits shall extend to and/or be included in contracts with CITY's contractor or  
21    consultant.

22          **ARTICLE 9. INDEMNIFICATION**

23          A.     To the fullest extent permitted by law, CITY shall defend (at CITY's sole cost and expense  
24    with legal counsel reasonably acceptable to AUTHORITY), indemnify, protect, and hold harmless  
25    AUTHORITY, its officers, directors, employees, and agents (collectively the "Indemnified Parties"), from  
26    and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration

1 awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and  
2 attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of  
3 persons (CITY's employees included), for damage to property, including property owned by AUTHORITY,  
4 or from any violation of any federal, state, or local law or ordinance, alleged to be caused by the negligent  
5 acts, omissions or willful misconduct of CITY, its officers, directors, employees or agents in connection  
6 with or arising out of the performance of this Agreement.

7 B. To the fullest extent permitted by law, AUTHORITY shall defend (at AUTHORITY's sole  
8 cost and expense with legal counsel reasonably acceptable to CITY), indemnify, protect, and hold  
9 harmless CITY, its officers, directors, employees, and agents (collectively the "Indemnified Parties"), from  
10 and against any and all liabilities, actions, suits, claims, demands, losses, costs, judgments, arbitration  
11 awards, settlements, damages, demands, orders, penalties, and expenses including legal costs and  
12 attorney fees (collectively "Claims"), including but not limited to Claims arising from injuries to or death of  
13 persons (AUTHORITY's employees included), for damage to property, including property owned by CITY,  
14 or from any violation of any federal, state, or local law or ordinance, alleged to be caused by the negligent  
15 acts, omissions or willful misconduct of AUTHORITY, its officers, directors, employees or agents in  
16 connection with or arising out of the performance of this Agreement.

17 C. The indemnification and defense obligations of this Agreement shall survive its expiration  
18 or termination.

19 **ARTICLE 10. ADDITIONAL PROVISIONS**

20 A. Term of Agreement: The term of this Agreement shall be in full force and effect through  
21 June 30, 2024.

22 B. Termination: In the event either Party defaults in the performance of its obligations under  
23 this Agreement or breaches any of the provisions of this Agreement, the non-defaulting Party shall provide  
24 written notice to the defaulting Party to cure such default within thirty (30) days of such default. If the  
25 default cannot be cured within such time, as determined by the non-defaulting Party, then the defaulting  
26 Party shall have such additional time as provided in the written notice or such time as the Parties may

1 otherwise agree in writing. In any event, the non-defaulting Party shall promptly take such actions as are  
2 reasonably necessary to cure the default. If the default or breach is material and not cured within the  
3 time provided herein, either Party has the option, in addition to any other remedies available at law, to  
4 terminate this Agreement upon thirty (30) days' prior written notice to the other Party.

5 C. Compliance with All Laws: AUTHORITY and CITY shall comply with all applicable federal,  
6 state, and local laws, statues, ordinances and regulations of any governmental authority having  
7 jurisdiction over the PROJECT.

8 D. Legal Authority: AUTHORITY and CITY hereto warrants that the persons executing this  
9 Agreement are authorized to execute this Agreement on behalf of said Parties and that by so executing  
10 this Agreement, the Parties hereto are formally bound to the provisions of this Agreement.

11 E. Severability: If any term, provision, covenant or condition of this Agreement is held to be  
12 invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the  
13 remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or  
14 condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15 F. Counterparts of Agreement: This Agreement may be executed and delivered in any  
16 number of counterparts, each of which, when executed and delivered shall be deemed an original and all  
17 of which together shall constitute the same agreement. Facsimile signatures will be permitted.

18 G. Force Majeure: Either Party shall be excused from performing its obligations under this  
19 Agreement during the time and to the extent that it is prevented from performing by an unforeseeable  
20 cause beyond its control, including but not limited to; any incidence of fire, flood; acts of God;  
21 commandeering of material, products, plants or facilities by the federal, state or local government; national  
22 fuel shortage; or a material act or omission by the other Party; when satisfactory evidence of such cause  
23 is presented to the other Party, and provided further that such nonperformance is unforeseeable, beyond  
24 the control and is not due to the fault or negligence of the Party not performing.

25 H. Assignment: Neither this Agreement, nor any of the Parties' rights, obligations, duties, or  
26 authority hereunder may be assigned in whole or in part by either Party without the prior written consent

1 of the other Party in its sole and absolute discretion. Any such attempt of assignment shall be deemed  
 2 void and of no force and effect. Consent to one assignment shall not be deemed consent to any  
 3 subsequent assignment, nor the waiver of any right to consent to such subsequent assignment.

4 I. Governing Law: The laws of the State of California and applicable local and federal laws,  
 5 regulations and guidelines shall govern this Agreement.

6 J. Litigation fees: In the event that either Party to this Agreement shall commence any legal  
 7 or equitable action to enforce or interpret this Agreement, the prevailing party shall be entitled to recover  
 8 its costs of suit, including reasonable costs and attorney's fees as determined by the court.

9 K. Notices: Any notices, requests, or demands made between the Parties pursuant to this  
 10 Agreement are to be directed as follows:

To CITY	To AUTHORITY
City of Huntington Beach	Orange County Transportation Authority
Public Works Department	550 South Main Street
2000 Main Street	P.O. Box 14184
Huntington Beach, CA 92648	Orange, CA 92863-1584
Attention: Chau Vu	Attention: Ms. Reem Hashem
Acting Director of Public Works	Section Manager, Capital Projects
Tel: (714) 374 5345	Tel: (714) 560-5446
Email: cvu@surfcity-hb.org	Email: rhashem@octa.net

21 /  
 22 /  
 23 /  
 24 /  
 25 /  
 26 /



This Agreement shall be made effective upon execution by both Parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement No. C-3-2654 to be executed as of the date of the last signature below.

CITY OF HUNTINGTON BEACH

ORANGE COUNTY TRANSPORTATION AUTHORITY

By: \_\_\_\_\_  
Tony Strickland  
Mayor

By: \_\_\_\_\_  
Darrell E. Johnson  
Chief Executive Officer

ATTEST:

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Robin Estanislau  
City Clerk

By: \_\_\_\_\_  
James M. Donich  
General Counsel

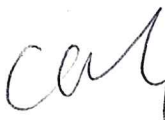
APPROVAL RECOMMENDED:

APPROVAL RECOMMENDED:

By:   
Chau Vu  
Public Works Director

By: \_\_\_\_\_  
James G. Beil, P.E.  
Executive Director, Capital Programs

APPROVED AS TO FORM:

By: \_\_\_\_\_   
Michael E. Gates  
City Attorney

Attachment:

Schedule A – Maximum Reimbursement for Combined City Services

**SCHEDULE A**

**REIMBURSEMENT SCHEDULE FOR COMBINED CITY SERVICES**

**CITY OF HUNTINGTON BEACH**

<i>Item No.</i>	<i>Description of City Services</i>	<i>Maximum Reimbursement Amount(1)</i>
1	Review and approval of plans, specifications, plans, and other pertinent engineering plans and reports, Traffic Management Plan (TMP) review and concurrence, and construction oversight inspection services related to CITY FACILITIES.	\$180,000
2	Traffic engineering and detour inspection	\$14,000
3	Police services (including overtime costs)	\$6,000
	<b>TOTAL MAXIMUM REIMBURSEMENT</b>	<b>\$200,000</b>

(1) Schedule A shows estimated reimbursement amounts for each CITY SERVICES item of work. During the term of this Agreement, the CITY may redistribute funds for items of work as needed; however, the total combined amount for CITY SERVICES shall not exceed the Total Maximum Reimbursement amount shown herein.